2003

Butterfield v. Butterfield : Brief of Appellant

Utah Court of Appeals

David J. Friel; Attorney for Appellant.
David Paul White; Attorney for Appellee.

IN THE UTAH COURT OF APPEALS

JORETTA BUTTERFIELD, Petitioner/Appellant, vs. JAMES SHERWOOD BUTTERFIELD, Respondent/Appellee.	*	Appellate Case No. 20030490CA

BRIEF OF APPELLANT

Appeal from Second Revised Findings of Fact and Conclusions of Law and Second Revised Decree of Divorce and Revised Order Regarding Petitioner's Motion for New Trial of the Third District Court, Judge Ronald E. Nehring.

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STATEMENT OF JURISDICTION

The Court has jurisdiction pursuant to Rule 3(a) Utah Rules of Appellate Procedure.

STATEMENT OF ISSUES

1. The trial court erred in its determination that "as a matter of law" there would be no alimony awarded in the case based on the "deemed admitted" Request for Admissions which the Court determined created an enforceable Premarital Agreement.

Standard of Review: Appellate review of a trial court's determination of the law is usually characterized by the term "correctness." Controlling Utah case law teaches that "correctness" means the Appellate Court decides the matter for itself and does not defer in any degree to the trial Judge's determination of law. State v. Pena, 869 P.2d 932, 936-940 (Utah 1994) quoting State v. Deli, 861 P.2d 431, 433 (Utah 1993). There may also be appellate review, "when there is a misunderstanding or misapplication of the law resulting in substantial and prejudicial

error, or the evidence clearly preponderates against the findings. . ." Elman v. Elman, 45 P.3d 176 (Utah App. 2002).

2. Should the trial court have examined the statutory factors of alimony under Utah Code Section 30-3-5 and Jones v. Jones, 700 P.2d 1072 (Utah 1985) regardless of the court ruling concerning the enforcement of the Premarital Agreement?

Standard of Review: Trial judges are given "some discretion" in determining mixed questions of fact and law. State v. Pena, 869 P.2d 932, 936-40 (Utah 1994). Trial courts have considerable discretion in determining alimony ... and will be upheld on appeal unless a clear and prejudicial abuse of discretion is demonstrated. Breinholt v. Breinholt, 905 P.2d 877 (Utah App. 1995) quoting Howell v. Howell, 806 P.2d 1209 (Utah App. 1991). Failure to consider the Jones factors constitutes an abuse of discretion. Paffel v. Paffel, 732 P.2d 96, 101 (Utah 1986) and Rehn v. Rehn, 974 P.2d 306 (Utah App. 1999). Failure of a Trial court to make findings on all material issues is reversible error unless the facts in the record are clear, uncontroverted, and capable of supporting only a finding in favor of judgment. Haumont v. Haumont, 793 P.2d 421, 425 (Utah App. 1990). The findings of fact

must show that the Court's judgment or decree follows logically from, and is supported by the evidence. Smith v. Smith, 726 P.2d 423, 426 (Utah 1986).

3. Did the Court err in granting Respondent's Motion for Summary Judgement on the day of trial and in denying Petitioner's Motion to Amend?

Standard of Review: Summary judgment should be granted only if there has been a showing "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Book v. Attorney's Title Guar. Fund*, 2001 UT 13, Paragraph 28, 20 P.3d 319 (quoting Utah R. Civ. P. 56(c)). In reviewing the district court's grant of summary judgment, "we review the court's legal decisions for correctness, giving no deference, and review the facts and inferences therefrom in the light most favorable to the nonmoving party." Id. (citation omitted). When the facts are not in dispute, "we review the trial court's conclusions as to the legal effect of a given set of . . . . .facts for correctness." *Bradford v. Bradford,* 1999 UT App 373 Paragraph 10, 993 P.2d 887 (citation omitted), *cert. denied, Bradford v. Demita,* 4 P.3d 1289 (Utah 2000).

DETERMINATIVE STATUTES AND RULES

Utah Code Section 30-3-35(7)(a)(i-iv)

> (7) (a) The court shall consider at least the following factors in determining alimony:

(i) the financial condition and needs of the recipient spouse;
(ii) the recipient's earning capacity or ability to produce income;
(iii) the ability of the payor spouse to provide support; and
(iv) the length of the marriage.

Utah Code Section 30-8-6. Enforcement.

1. A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

   (a) that party did not execute the agreement voluntarily; or
   (b) the agreement was fraudulent when it was executed and, before execution of the agreement, that party:
      (i) was not provided a reasonable disclosure of the property or financial obligations of the other party insofar as was possible;
      (ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and
      (iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

STATEMENT OF THE CASE

Nature of the Case

This is a divorce matter involving a Premarital Agreement that was executed by the parties one week prior to the marriage. The validity of the Premarital Agreement has been at issue since the inception of the case.

Disposition in Lower Court

The trial court entered Second Revised Findings of Fact and Conclusions of Law and a Second Revised Decree of Divorce on July 3, 2002. The Court also denied Petitioner's Motion for New Trial.

Statement of Facts

The main issues associated with the Premarital Agreement deal with Petitioner's claim against Respondent for alimony.

At a Pre-Trial Settlement Conference held on July 31, 2001, Domestic Relations Commissioner Michael S. Evans noted in his Minute Entry that, "the Premarital Agreement is unenforceable due to the apparent deficiencies, it does not include a disclosure of assets." (R. at 77.)

Just months after the Commissioner made his Pre-Trial finding, Petitioner filed a motion with the Court regarding the enforcement of the Premarital Agreement and a hearing was heard before Commissioner Evans who then recommended and ordered by way of a minute entry that, "the Commissioner recommends that the Premarital document is invalid." (R. at 126.)

Neither party objected to the recommendation of the Domestic Relations Commissioner and by operation of law the recommendation of the Commissioner became an order of the Court (Rule 6-401(4), Rules of Judicial Administration).

Approximately one month after the October 2001 hearing before the Commissioner, Respondent submitted discovery to the Petitioner by way of interrogatories, request for admissions, and request for production of documents. (R. at 129 and 130.)

Petitioner's discovery answers were due to Respondent on December 24, 2001. On December 20, 2001 counsel for Petitioner requested an extension of time in which to answer discovery and Petitioner was confident an extension would be granted by Respondent since Petitioner had given Respondent an additional four months to answer Petitioner's initial discovery. Counsel for Respondent never responded. On Sunday, December 26, 2001, Respondent submitted a "Motion for Summary Judgement or in the Alternative Request for Pre-Trial" with the Court." (R. at 136.)

On the day that the discovery was technically late, December 27, 2001, Petitioner submitted her Certificate of Service regarding her "Answers to Request for Admissions." (R. at 143.)

Over the next several months the parties submitted documents and letters to the Court requesting that the Court make a decision on Respondent's Motion for Summary Judgment. Not until the day before trial did the Court instruct counsel that the Request for Admissions filed by the Respondent were "deemed admitted" due to the late filing by the Petitioner.

In a telephonic conference, the Court instructed the parties that the trial would still need to go on as scheduled because the Petitioner still had a right to have her alimony claim adjudicated even though the Request for Admissions were "deemed admitted." This was spelled out in the Court's Minute Entry that was entered after the telephonic conference and signed by Judge Nehring prior to trial on May 1, 2002. Specifically, the judge stated in the Order that, "Petitioner is bound by the matters addressed in Respondent's Requests for Admissions. I do not believe however, that these admissions conclusively foreclose the Petitioner from going forward with a claim for alimony." (R. at 212.)

On the day of trial, May 1, 2002, the Court made a summary finding and decision that reversed both the previous order of the Court regarding the validity of the Premarital Agreement and the Minute Entry Order and found that since the

request for admissions were "deemed admitted" that "as a matter of law, I am ruling that no alimony will be awarded in this case." (R. at 460, page 4 line 5.)

In effect, on the day of trial the Court granted Respondent's Motion for Summary Judgement.

ARGUMENT

POINT 1

THE TRIAL COURT ERRED IN ITS DETERMINATION THAT AS A MATTER OF LAW THERE WOULD BE NO ALIMONY AWARDED IN THE CASE BASED ON THE "DEEMED ADMITTED" REQUEST FOR ADMISSIONS WHICH THE COURT DETERMINED CREATED AN ENFORCEABLE PREMARITAL AGREEMENT.

Most of the facts are not in dispute. The Request for Admissions as put forth by Respondent were "deemed admitted" by the Court in the telephonic conference held between the Court and the parties' respective counsel the day before trial.

In the telephonic conference, the Court determined Petitioner still would be allowed to move her case forward even though Respondent's Request for Admissions were "deemed admitted." The Court set forth the basis for this decision in a Minute Entry of the Court signed by the Judge on May 1, 2002. (R. at 212 and 213)

Even though it is impossible to determine if the Judge signed this Minute Entry before or after the scheduled trial which was also held on May 1, 2002, it makes absolutely no sense that the Judge would sign this Minute Entry **AFTER** he ruled at trial that "as a matter of law there would be no alimony awarded in the case based on the "deemed admitted" Request for Admissions which the Court determined created an enforceable Premarital Agreement."

There is no dispute that there was a Premarital Agreement signed by both parties. (R. at 24.) The question from day one has been whether the Agreement was enforceable or invalid under Utah law.

Appellant has previously stated in her argument that six months prior to trial and before Respondent's Request for Admissions were ever submitted to Petitioner, the Court ruled that the Premarital Agreement was unenforceable. (R. at 126.)

The Judge did not recognize that the Court had already ruled on the enforcement of the Premarital Agreement. On the scheduled day of trial, May 1, 2002, the Court simply examined Respondent's Request for Admissions. Specifically, Respondent's Request for Admission No. 12 states, "Admit that you were advised of all the property owned by the Respondent prior to signing the Premarital Agreement." (R. at 140.)

The Court then stated, "based on the matters deemed admitted, it has been brought to my attention that the Premarital Agreement, the enforcement of which has been deemed admitted, includes a waiver of alimony. (R. at 460, page four, lines 1-4.)

There are absolutely no questions of the twelve Request for Admissions (R. at 139-140.) submitted by Respondent asking Petitioner for an admission or denial about the enforcement of the Agreement. The Court made a quantum leap in its ruling that the "deemed admitted" Admissions made the Premarital Agreement enforceable.

The Court then made an additional error by ruling that, "as a matter of law, I am ruling that no alimony will be awarded in this case." (R. at 460 page 4, line 5 and 6.)

The Utah Court of Appeals had previously held in the case of Bradford v. Bradford, 199 UT App 373, 993 P.2d 887, "When the facts are not in dispute, we review the trial Court's conclusions as to the legal effort of a given set of . . . facts for correctness."

Even though the Request for Admissions were "deemed admitted" there is no question asked in the Request for Admissions regarding the enforcement of the

Premarital Agreement. Further, even if the Premarital Agreement was enforceable, the Court had already ruled that, "I do not believe that these admissions conclusively foreclose the Petitioner from going forward with a claim for alimony. I have reached this conclusion because the matters deemed admitted do not fully address all of the elements necessary to conclude an evaluation of the propriety of alimony as set forth in Jones v. Jones. (R. at 212 and 213.)

Additionally, a strict reading of the statute at Utah Code Section 30-8-6 lists when a premarital agreement is not enforceable. Specifically, at Section 1(b)(ii) of the cited section it states that, "A premarital agreement is not enforceable if the party against whom enforcement is sought proves that the agreement was fraudulent when it was executed and, before execution of the agreement, that party . . .did not voluntarily and expressly waive, in writing, any right to disclose of the property or financial obligations of the other party beyond the disclosure provided. . . . "

A close examination of the premarital agreement reveals that Petitioner did not expressly waive, in writing, any right to disclose of the property owned by the Respondent nor was there any disclosure of Respondent's millions of dollars of assets.

POINT 2

SHOULD THE TRIAL COURT HAVE EXAMINED THE STATUTORY FACTORS OF ALIMONY FOUND IN UTAH CODE SECTION 30-3-5 AND JONES V. JONES, 700 P. 2d 1072 (UTAH 1985) REGARDLESS OF THE COURT RULING CONCERNING THE ENFORCEMENT OF THE PREMARITAL AGREEMENT?

As was previously noted, prior to the Court's ruling at the time of the scheduled trial, the Court had signed a Minute Entry stating that, "I do not believe, however, that these admissions conclusively foreclose the Petitioner from going forward with a claim for alimony." (R. at 212.)

Even though the Court seemingly reversed this ruling[1] the principle still stands: Should the statutory factors of alimony as set forth in Utah Code and Jones been examined by the Court and since these factors were not examined was the non-examination an abuse of discretion by the trial Court?

Similarly, the Utah Court of Appeals found in the case of Howell v. Howell, 806 P.2d 1209, 1213 (Utah Court App. 1991) that, "the trial court abused its discretion by failing to enter specific findings on wife's financial needs and condition, and the

[1] This Minute Entry was received by counsel on or about May 7, 2002. At first blush, counsel for Petitioner interpreted this ruling as being signed after the trial. Therefore, counsel for Petitioner thought that the Court was entering this order and reversing the decision made at trial.

pertinent facts in the record are not 'clear, uncontroverted, and capable of supporting only a finding in favor of judgement.'"

Further, the Utah Supreme Court has stated that, "Failure to consider the Jones factors constitutes an abuse of discretion (Paffel v. Paffel, 732 P.2d 96, 101 (Utah 1986).

POINT 3

DID THE TRIAL COURT ERR IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT ON THE DAY OF TRIAL AND IN DENYING PETITIONER'S MOTION TO AMEND ANSWERS TO REQUEST FOR ADMISSIONS?

Respondent filed his Motion for Summary Judgment or in alternative Pre-Trial on December 27, 2001. Petitioner filed her Answers to Request for Admissions with the Court on December 31, 2001. On two separate occasions, Respondent submitted to the Court a Notice to Submit for Decision With Addendum Exhibit. (R. at 145-146.)

Petitioner submitted a letter to the Court through counsel wherein counsel pointed out to the Court that the Respondent's Notice to Submit was not properly being submitted to Judge Nehring and that Respondent's Motion for Summary Judgment should be noticed for hearing before Commissioner Michael S. Evans. (R. at 154.)

In a defacto manner, Judge Nehring agreed since he never ruled on Respondent's Motion until the day of trial. In a technical sense, Judge Nehring never did rule on the Summary Judgment Motion, but his final decision on the day of trial was in all actuality, a ruling of summary judgment in favor of the Respondent.

Quite literally, there was no trial held in the case because Judge Nehring claimed that "as matter of law" the Premarital Agreement was valid and enforceable.

Petitioner submitted her Motion to Amend Answers to Requests for Admissions to the Court on the day of trial (See Addendum No. 1). Petitioner pointed out in her motion that the original responses to Respondent's Request for Admissions had been submitted on December 27, 2001, a day after they were due.

Since the Court had determined just before trial that the Request for Admissions were "deemed admitted" Petitioner had not filed her motion until that decision was rendered by the Court.

It is critical to note that the specific Motion to Amend Answers to Request for Admissions as specifically mentioned by the Judge were not placed in the court file and therefore made part of the record. The fact remains that the document was filed and reviewed by the Court and the motion was denied (See Addendum No. 1).

The Court denied Petitioner's Motion to Amend at trial, stating that, "I've denied that motion because the Request for Admissions, which I have deemed admitted, carry with them implications concerning trial preparation and witness identification . . .the lawyers construe their case around what they have to prove and don't have to prove. And when an attempt is made to withdraw the matters deemed admitted literally on the day of trial, it is unduly prejudicial to the party who would have to reconfigure his or her case in order to accommodate the withdrawal of admissions. So I have denied that motion." (R. at 460, page 3, lines 15-25.)

It is important to note that Respondent would not need to reconfigure his case because Petitioner had already submitted her answers to the discovery over four months earlier. Simply put, Petitioner was ready for her day in court and the Court never allowed trial to proceed due to its decision regarding the Premarital Agreement and its effect on the alimony issue.

CONCLUSION

Based upon the errors committed by the trial court, Petitioner requests that the trial court rulings be reversed.

DATED this 30 day of OCTOBER, 2003.

David J Friel
Attorney for Appellant

CERTIFICATE OF MAILING

I hereby certify that I caused to be sent by U.S. mail, first class, postage pre-paid, a true and correct copy of the foregoing document on this 30 day of October, 2003, to:

David White
5278 South Pinehill Business Park,
Suite A200
Murray, UT 84123

C Butterfield app

Addendum
No. 1

David J Friel
Attorney for Petitioner
4059 South 4000 West
West Valley City, UT 84120
Telephone (801) 967-5500
Facsimile (801) 967-5563
Bar No 6225

IN THE THIRD JUDICIAL DISTRICT COURT

OF SALT LAKE COUNTY, STATE OF UTAH

JORETTA BUTTERFIELD, Petitioner, vs. JAMES SHERWOOD BUTTERFIELD, Respondent	**MOTION TO AMEND ANSWERS TO REQUESTS FOR ADMISSIONS** Civil No 004906618DA Judge Ronald E Nehring Commissioner Michael S Evans

Petitioner, Joretta Butterfield, by and through counsel, David J Friel, hereby moves the above-entitled Court to amend her requests for admissions in regards to Respondent's Request for Admissions submitted on or about November 19, 2001

Two days before trial, on April 29, 2002, the Court ruled on Respondent's Motion for Summary Judgment or in the alternative, Motion for pre-trial which had been filed on December 26, 2001 The Court informed counsel for both parties by way of a telephonic message that counsel for Petitioner received on April 29, 2002 that the Court had ruled on Respondent's request for admissions and that the Court had "deemed Respondent's request for admissions as admitted "

In a telephonic pre-trial held on April 30, 2002, the Court reiterated its decision to grant Respondent's Motion and cited the Utah Supreme Court case of Langeland v. Monarch Motors, Inc, 952 P.2d 1058 (Utah 1998), as case law on how to deal with a Motion to Amend or Withdraw Answers to Requests for Admissions.

What is most unusual in this case is that Respondent filed his motion to have the admissions "deemed admitted" just one or two days after they were due. This must be considered since Petitioner had graciously allowed Respondent several extensions to submit Answers to Petitioner's discovery which ended up being received by the Petitioner approximately four months after it was due.

Therefore, in accord with Langeland, Petitioner will attempt to show that the matters deemed admitted against Petitioner are relevant to the merits of the underlying cause of action. Petitioner submits the following:

1. Out of the 13 requests for admissions (there are actually two number nine requests for admissions) only two of the "deemed admitted" questions are relevant to the merits of the underlying cause of action. First, question number nine asks, "Admit that the Respondent has paid over $7,000 in payments on your condo." Respondent has requested that Petitioner reimburse Respondent for a total of approximately $10,000 that Respondent allegedly paid Petitioner during the marriage.

2. Petitioner specifically denied this request for admission in her answers to requests for admissions that were filed on or about December 27, 2001 (See Exhibit No. 1). If Respondent does not move forward at trial in an attempt to re-coop these monies

that Respondent allegedly paid, this matter will not be relevant to the merits of the underlying cause of action If Respondent continues in his request for reimbursement for these funds, the issue of the admission will be relevant in regards to the division of assets which is to be determined at trial

3. Petitioner has executed an affidavit indicating that this issue which has been deemed admitted is in fact untrue and Petitioner has the ability to prove that the admission is not true

4 Question No 12 of the Request for Admissions states, "Admit that you were advised of all property owned by the Respondent prior to signing the pre-nuptial " This has been deemed admitted by the Court and the issues are relevant to the merits of the underlying cause of action due to their being a signed and executed pre-nuptial agreement which was signed by the parties on May 20, 1998 The pre-nuptial agreement has been used by the Respondent as a means in attempting to not pay any alimony to the Petitioner The pre-nuptial agreement specifically states that, "Further, each party waive any claim to alimony in the even of separation or divorce " The pre-nuptial agreement is relevant to the merits of the case in regards to alimony Under the Jones factors of alimony, Petitioner does have need for alimony and Respondent has the ability to pay alimony

5 Further, Petitioner is submitting an affidavit with this motion with specific facts indicating that the matter of the pre-nuptial agreement being deemed

admitted is in fact untrue. Petitioner submits her affidavit in support of this motion which is being filed concurrently with this document.

DATED this 30 day of APRIL, 2002.

David J Friel
Attorney for Petitioner

CERTIFICATE OF FACSIMILE

I hereby certify that I caused to be sent via facsimile a true and correct copy of the foregoing document on this 30 day of APRIL, 2002 to:

Sylvia Colton
1206 West South Jordan Parkway, Unit B
South Jordan, UT 84095-4551
Facsimile No. (801) 446-5500

C Butterfield mot4

David J Friel
Attorney for Petitioner
4059 South 4000 West
West Valley City, UT 84120
Telephone: (801) 967-5500
Facsimile: (801) 967-5563
Bar No. 6225

IN THE THIRD JUDICIAL DISTRICT COURT

OF SALT LAKE COUNTY, STATE OF UTAH

JORETTA BUTTERFIELD, Petitioner, vs. JAMES SHERWOOD BUTTERFIELD, Respondent.	**ANSWERS TO REQUEST FOR ADMISSIONS** Civil No. 004906618DA Judge: Ronald E. Nehring Commissioner: Michael S. Evans

Petitioner, Joretta Butterfield, by and through counsel, David J Friel hereby provides the following answers to Request for Admissions:

1. **REQUEST NO. 1:** Admit that you were laid off from your last employment prior to marriage.

ANSWER: Admit.

2. **REQUEST NO. 2:** Admit that you did not quit your job to marry the Respondent.

ANSWER: Admit.

3. **REQUEST NO. 3:** Admit that you had substantial health problems prior to marriage to the Respondent.

ANSWER: Admit.

4. **REQUEST NO. 4:** Admit that you are now employed, and were not employed prior to marriage to the Respondent.

ANSWER: Admit.

5. **REQUEST NO. 5:** Admit that the Respondent told you that he would only spend $5,000 for a wedding ring.

ANSWER: Objection. The wedding ring that Respondent gave to Petitioner was a gift and the amount spent on the ring has absolutely no relevance to this case.

6. **REQUEST NO. 6:** Admit that you agreed to pay $3,000 on your wedding ring if the Respondent would buy you an $8,000 ring.

ANSWER: Objection. Please see answer to No. 5.

7. **REQUEST NO. 7:** Admit that the Respondent did buy you a $8,000 wedding ring.

ANSWER: Objection. Please see answer to No. 5.

8. **REQUEST NO. 8:** Admit to date that you have not paid the Respondent anything on your wedding ring.

ANSWER: Objection. Please see answer to No. 5.

9. **REQUEST NO. 9:** Admit that the Respondent has paid over $7,000 in payments on your condo.

ANSWER: Deny.

9.[sic] **REQUEST NO. 9[sic]:** Admit that you went on a cruise with the Respondent.

ANSWER: Admit.

10. **REQUEST NO. 10:** Admit that you agreed to help pay for said cruise costs.

ANSWER: Objection. This request has no relevance to the issues at hand.

11. **REQUEST NO. 11:** Admit that you have not paid anything towards said cruise costs to the Respondent.

ANSWER: Objection. Please see answer to No. 10.

12. **REQUEST NO. 12:** Admit that you were advised of all property owned by the Respondent prior to signing the pre-nuptial agreement.

ANSWER: Deny.

DATED this 27 day of DECEMBER, 2001.

David J Friel
Attorney for Petitioner

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed, a true and correct copy of the foregoing document on this 27 day of DECEMBER, 2001, by United States mail, first class, postage pre-paid, to:

Sylvia Colton
1206 West South Jordan Parkway, Unit B
South Jordan, UT 84095-4551

C Butterfield ans

DAVID J FRIEL
ATTORNEY & COUNSELOR AT LAW
4059 SOUTH 4000 WEST
WEST VALLEY CITY, UT 84120
TELEPHONE: (801) 967-5500
FACSIMILE: (801) 967-5563

December 20, 2001

Sylvia Colton
1206 West South Jordan Parkway, Unit B
South Jordan, UT 84095-5512

RE: Butterfield v. Butterfield, Case No. 004906618DA

Dear Sylvia:

You are picking up right where opposing counsel left off by making by insulting remarks about my client. This does not help the matter but drives a further wedge between the clients and our ability to reach some type of resolution. I thought you might be above relaying your client's and his family's insulting remarks.

As a fairness issue, how do you think the Court is going to view your denying me the opportunity to set a deposition of your client and at the same time you have sent extensive discovery in regards to interrogatories, request for admissions, and request for production of documents. I would imagine that the Court would award me attorney fees for your unreasonable position on this issue if I have to set a hearing before Commissioner Evans.

Finally, my records indicate that discovery is due to your offices on December 24, 2001. Due to the holidays, my client is going to need an extension of time in which to respond to your discovery. Please let me know your position on this issue. I will wait to hear from you.

Sincerely,

David J Friel
Attorney at Law

DJF\laf
cc Joretta Butterfield
C Butterfield lt15

David J Friel
Attorney for Petitioner
4059 South 4000 West
West Valley City, Utah 84120
Telephone: (801) 967-5500
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Bar No. 6225

IN THE THIRD JUDICIAL DISTRICT COURT

OF SALT LAKE COUNTY, STATE OF UTAH

JORETTA BUTTERFIELD, Petitioner, vs. JAMES SHERWOOD BUTTERFIELD, Respondent.	**AFFIDAVIT OF PETITIONER IN SUPPORT OF MOTION TO AMEND ANSWERS TO REQUEST FOR ADMISSIONS** Civil No. 004906618DA Judge: Ronald E. Nehring Commissioner: Michael S. Evans

STATE OF UTAH)
: ss
COUNTY OF SALT LAKE)

I, Joretta Butterfield, depose and state as follows:

1. I am the Petitioner in the above-entitled action.

2. This affidavit is in support of my Motion to Amend Answers to Requests for Admissions which I am filing concurrently with this affidavit.

3. I am willing to testify in a court of law concerning the truthfulness of the statements made in this affidavit.

4 I have been informed by my attorney that the Court has ruled that Respondent's request for admissions have been "deemed admitted" by the Court **There are specific facts which have been deemed admitted which are untrue**

5 First, Respondent has not paid $7,000 in payments on my condo For the duration of our marriage when I lived with Respondent in his home, I had renters in my condo The renters were paying rent that went towards the condo payment There was only one or two occasions when Respondent loaned me money and I repaid the loan proceeds back to him There is absolutely no way that Respondent made $7,000 in payments on my condo during the time that we were residing together

6 Second, Respondent is claiming that he gave me full disclosure in regards to the extent of his property prior to execution and signing the pre-nuptial agreement in May, 1998 This could not be further from the truth When I met with the Respondent and his son, Cleon Butterfield, on May 20, 1998 we had lunch at the Coachmen During the lunch, I was presented with a pre-nuptial agreement and we discussed Respondent's desire that we both sign a pre-nuptial agreement **At absolutely no time prior to signing the pre-nuptial agreement, did Respondent or his son, Cleon Butterfield, describe to me the nature and extent of Respondent's property. Even though it was mentioned that there were some family trusts, I was given absolutely no information in regards to the holdings of the Respondent or the value of any holdings** I have read information and statements from the Respondent and his son that indicate the exact

opposite. I have read that they claim they told me the specific property and holdings of the Respondent and that I had full information and knowledge concerning the extent of those properties and trusts.

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VERIFICATION

STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

Joretta Butterfield, being first duly sworn and under oath, deposes and says that she is the Petitioner in the above-entitled action; that she has read the foregoing document, and understands the contents thereof, and the same is true of her own knowledge, information and belief.

Joretta Butterfield

SUBSCRIBED AND SWORN TO before me this 20 day of APRIL, 2002.

NOTARY PUBLIC
DAVID J. FAIEL
4668 South 4000 West
Salt Lake City, Utah 84129
My Commission Expires
April 20, 2005
State of Utah

NOTARY PUBLIC
Residing in Salt Lake County

CERTIFICATE OF FACSIMILE

I hereby certify that I caused to be sent via facsimile, a true and correct copy of the foregoing document on this 30 day of April, 2002, to:

Sylvia Colton
1206 West South Jordan Parkway, Unit B
South Jordan, UT 84095-4551
Facsimile No. (801) 446-5500

C Butterfield aff2